

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RONALD L. BIESCZK and SUSAN BIESCZK,

Plaintiffs-Appellants,

v

SHELLY MARIE BANE,

Defendant-Appellee.

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UNPUBLISHED

October 25, 2002

No. 233643

Macomb Circuit Court

LC No. 00-001437-NI

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In August 1997, a car driven by defendant struck a car driven by Ronald Biesczk (hereinafter "plaintiff"). Plaintiff did not seek medical attention immediately, and returned to work. Approximately one week after the accident plaintiff noticed puffiness in his groin, and several weeks later began experiencing pain in his upper back. A myelogram performed in February 1998 revealed a small protrusion in a disc in the thoracic area of plaintiff's back. A similar protrusion had been detected in 1995.

Plaintiff underwent outpatient laproscopic hernia surgery on June 23, 1998. He was released to return to work on July 14, 1998 with a restriction against lifting more than twenty pounds for three weeks. He underwent testicular surgery on December 22, 1998. This surgery was designed to relieve severe testicular pain that plaintiff had experienced since an accident in 1991. The surgery was successful, and plaintiff returned to work on January 12, 1999.

Plaintiff and Susan Biesczk filed suit alleging that the 1997 accident resulted in injuries to plaintiff's thoracic spine, a double hernia, and aggravation of his pre-existing conditions. Plaintiff contended that his injuries constituted a serious impairment of body function. Susan Biesczk claimed loss of consortium. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), (8), and (10). She argued that the medical records did not establish that plaintiff's hernias and thoracic back pain were attributable to the 1997 accident. In addition, defendant contended that plaintiff's injuries did not affect plaintiff's ability to lead his normal life. The trial court granted defendant's motion, finding that even though a factual dispute as to the nature and extent of plaintiff's injuries could be said to exist, the factual dispute was not

material to the determination of whether plaintiff suffered a serious impairment of body function. The court found that the evidence did not show that plaintiff's injuries affected his ability to lead his normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998); *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996).

A serious impairment of body function is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a). In determining whether the impairment of the important body function is serious, the court should consider factors such as the extent of the injury, the treatment required, the duration of the disability, and the extent of residual impairment and prognosis for eventual recovery. *Kern v Blethen-Coluni*, 240 Mich App 333, 341; 612 NW2d 838 (2000). In assessing the extent of the injury, the court may compare the plaintiff's lifestyle before and after the injury. *May v Sommerfield (After Remand)*, 240 Mich App 504, 506; 617 NW2d 920 (2000).

Plaintiff and Susan Biesczk argue that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The evidence showed that plaintiff had objectively manifested injuries, including a protruding disc in the thoracic area of his back and a double inguinal hernia. The trial court found that a factual dispute existed as to the nature and extent of plaintiff's injuries; nevertheless, the dispute was not material to the determination of whether plaintiff suffered a serious impairment of body function. Plaintiff was off work for three weeks while recovering from hernia surgery. He returned to his regular employment with a lifting restriction that was virtually identical to the restriction under which he worked prior to the 1997 accident. No evidence showed that plaintiff missed any work due to his back injury. The undisputed evidence showed that plaintiff's physical activities were severely limited prior to the 1997 accident, and were not further limited after the 1997 accident. Plaintiff's general ability to lead his normal life was not significantly altered by the injuries he sustained in the 1997 accident. *Miller v Purcell*, 246 Mich App 244, 250; 631 NW2d 760 (2001); *May, supra*. The trial court determined the issue of whether plaintiff suffered a serious impairment of body function was a question of law, MCL 500.3135(2)(a)(ii), and correctly granted defendant's motion for summary disposition.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra